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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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MAR 29 1993
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In the Matter of

Tariff Filing Requirements for
Nondominant Common Carriers

CC Docket No. 93-36

COMMENTS OF RCI LONG DISTANCE,
INC. AND ROCHESTER TELEPHONE
MOBILE COMMUNICATIONS

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March 26, 1993

(3321P)

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Introduction

RCI Long Distance, Inc. ("RCI")^{1/} and Rochester Telephone Mobile Communications ("RTMC")^{2/} submit these comments in response to the Commission's Notice initiating this proceeding.^{3/} The Commission issued this Notice in response to the decision of the United States Court of Appeals for the District of Columbia Circuit^{4/} invalidating the Commission's

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- ^{1/} RCI is a nondominant interexchange carrier that is indirectly wholly-owned by Rochester Telephone Corporation ("Rochester").
- ^{2/} RTMC is the wireline cellular licensee serving the Rochester, New York Metropolitan Statistical Area. RTMC is a limited partnership in which Rochester owns an 85% interest.
- ^{3/} Tariff Filing Requirements for Nondominant Common Carriers, CC Dkt. 93-36, Notice of Proposed Rulemaking, FCC 93-103 (released Feb. 19, 1993) ("Notice").
- ^{4/} Am. Tel & Tel. Co. v. FCC, 978 F.2d 727 (D.C. Cir. 1992).

permissive detariffing policy set forth in the Fourth Report in the Competitive Carrier proceeding.^{5/}

Although the Court of Appeals concluded that the Commission lacks statutory authority to refrain from requiring common carriers to file tariffs, the policy findings underlying the Fourth Report remain valid. Indeed, the Court expressed sympathy for the Commission's policy findings.^{6/} Accordingly, the Commission should -- as it proposes^{7/} -- establish tariffing rules that conform to those policy findings. To do so, the Commission should apply maximum streamlined regulation to the tariff filing requirements of nondominant common carriers. It should also explicitly find that cellular carriers are nondominant.

Argument

I. THE POLICY FINDINGS CONTAINED IN THE FOURTH REPORT REMAIN VALID.

The Commission has previously concluded that nondominant interexchange carriers -- i.e., carriers other than AT&T --

^{5/} Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor, CC Dkt. 79-252, Fourth Report and Order, 95 FCC 2d 554 (1983) ("Fourth Report").

^{6/} Am. Tel. & Tel. Co., 978 F.2d at 736 ("We understand fully why the Commission wants the flexibility to apply the tariff provisions of the Communications Act to AT&T, which the Commission regards as the dominant carrier, different from the way it applies the tariff provision to other competing carriers. We do not quarrel with the Commission's policy objectives.").

^{7/} Notice, ¶¶ 14-26.

lack market power and, therefore, are price takers. Their decisions simply will not determine the market price for interexchange services. On this basis, the Commission correctly concluded that:

...if these carriers attempted to charge unjust and unreasonable rates in violation of Section 201(b) of the Communications Act or to discriminate unreasonably in violation of Section 202(a) of the Act customers would simply move to other carriers.^{8/}

This conclusion is equally valid today. Competition has grown rapidly in the interexchange business since the issuance of the Fourth Report in 1983. Indeed, RCI first began providing service after the issuance of the Fourth Report. Its ability to grow and compete successfully was greatly assisted

The Commission's policy findings in the Fourth Report remain valid today. Although the Commission is no longer free to continue its permissive detariffing approach, it should craft its tariffing rules for nondominant interexchange carriers in a manner that conforms to those findings.

II. THE COMMISSION SHOULD CLASSIFY
CELLULAR CARRIERS AS NONDOMINANT.

In its Fifth Report in the Competitive Carrier proceeding, the Commission concluded that cellular carriers were not nondominant.^{9/} In this proceeding, the Commission does not propose to treat cellular carriers as nondominant.^{10/} The Commission should, in fact, take the opposite approach and declare cellular carriers nondominant. The Commission issued the Fifth Report when the first cellular carriers were just beginning operations. The state of the industry a decade later demonstrates that competitive conditions warrant a finding that cellular carriers are nondominant. In a recently-filed petition for rulemaking^{11/} the Cellular Telecommunications

Industry Association ("CTIA") makes a persuasive showing that, to the extent that the Commission should require cellular carriers to file interstate tariffs at all, it should subject them to the same tariff filing requirements as other nondominant carriers.

CTIA has demonstrated that:

- demand for cellular service is robust and growing rapidly;^{12/}
- competition and investment in cellular systems is accelerating;^{13/}
- prices for cellular services are dropping rapidly;^{14/} and
- substitutes for cellular service, including landline exchange service and Specialized Mobile Radio Services, provide a direct check on whatever ability cellular providers ever had to exercise market power.^{15/}

Under the criteria enunciated in the Fourth Report,^{16/}

^{12/} Id. at 16.

^{13/} Id.

^{14/} Id. at 19.

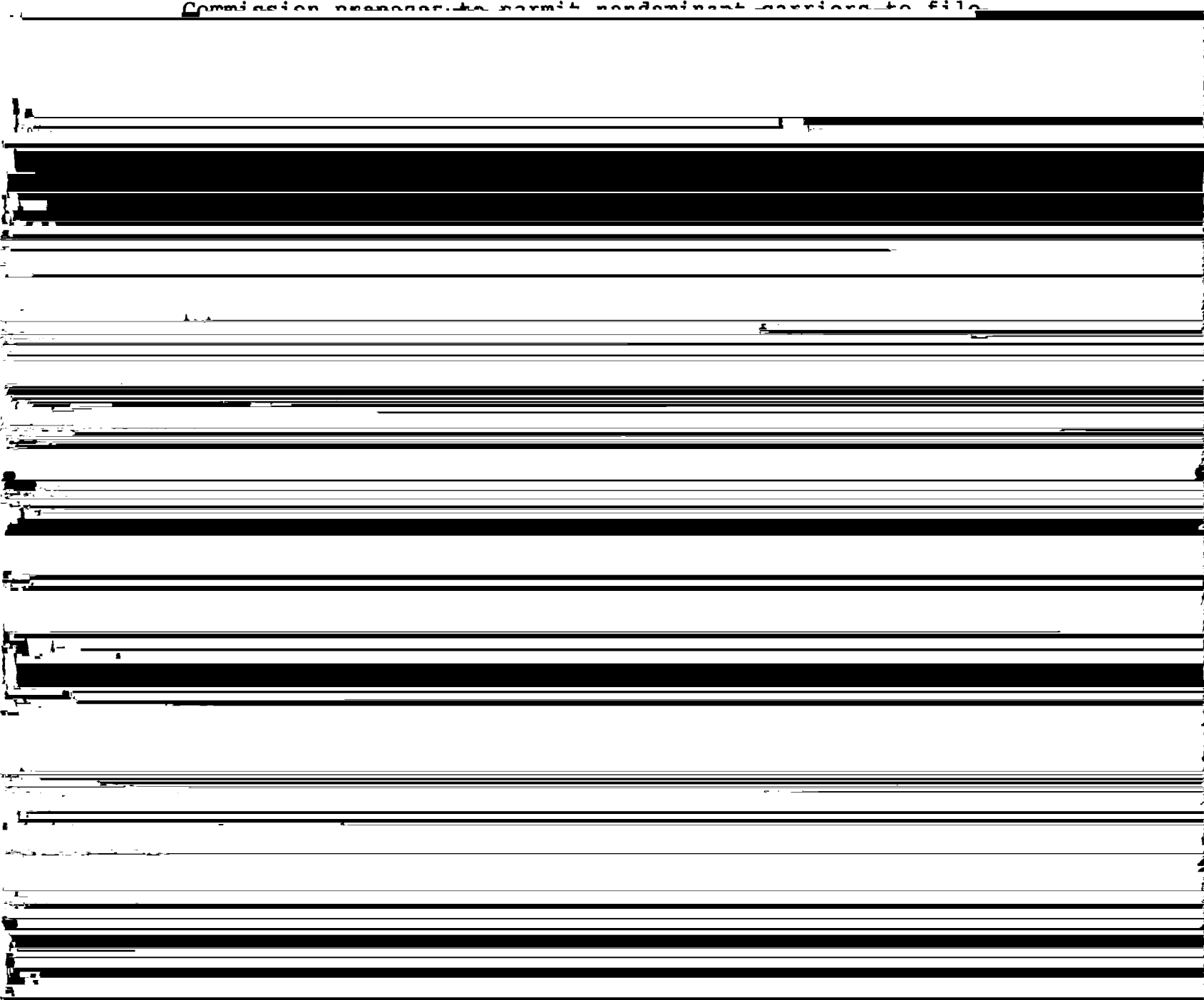
^{15/} Id. at 19-20.

^{16/} Fourth Report, 95 FCC 2d at 582 ("the relevant product and geographic markets, supported by factual evidence of demand and supply substitutability, and market power, supported factual evidence of the level and change in market shares and entry").

cellular carriers are nondominant and the Commission should so declare.

III. THE COMMISSION SHOULD ADOPT
MAXIMUM STREAMLINED REGULATION FOR
NONDOMINANT COMMON CARRIERS.

The Commission proposes to subject nondominant common carriers to minimal filing requirements. Specifically, the Commission proposes to permit nondominant carriers to file

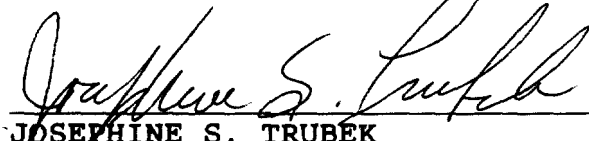


differently-situated carriers to different tariff filing requirements.^{20/} The proposals set forth in the Notice represent another means of recognizing these differences. There is no legal bar preventing the Commission from adopting its proposed rules.

Conclusion

For the foregoing reasons, the Commission should adopt the proposals contained in the Notice.

Respectfully submitted,



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^{20/} E.g., 47 C.F.R. § 61.58(b) (notice requirements for nondominant interexchange carriers); 47 C.F.R. § 61.39 (cost support requirements for small exchange carriers).